APPEAL NO. 010636

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 2, 2001. The hearing officer determined that: (1) on Thursday, _____, the appellant/cross-respondent (claimant) sustained an injury to her right ankle that arose out of and was in the course and scope of her employment; (2) the claimant did not sustain a compensable injury on _____; (3) the claimant did not report an injury to the employer by the 30th day after her injury, pursuant to Section 409.001 and the claimant did not have good cause for failing to do so; (4) the respondent/cross-appellant (carrier) did not waive its right to contest compensability of the claimant's alleged injury in accordance with Section 409.021; (5) due to her work-related injury to her right ankle, the claimant was unable, from September 15 through September 23, 2000, to obtain and retain employment at a wage equivalent to her preinjury wage; and (6) since the claimant did not sustain a compensable injury, the claimant did not have disability.

The claimant has appealed asserting: (1) the claimant did timely report the injury in accordance with Section 409.001; (2) the claimant sustained an injury to her back in addition to her ankle; (3) the claimant had disability through the time of the hearing; and (4) the carrier waived the right to dispute compensability by failure to comply with Sections 409.021 and 409.022. The carrier has appealed asserting: (1) the hearing officer's findings that the claimant sustained an injury to her right ankle in the course and scope of employment, and that due to her work-related injury, the claimant was unable, from September 15, 2000, through September 23, 2000, to obtain and retain employment at a wage equivalent to her preinjury wages do not correlate with his conclusions of law and should be reformed with a Decision Nunc Pro Tunc; and (2) in the alternative, these findings are against the great weight and preponderance of the evidence.

DECISION

Affirmed in part; reversed and remanded in part.

On _____, at the end of the claimant's second day of work for the employer, the claimant tripped and fell down some stairs in the building where she worked. The claimant did not tell any supervisor or manager about the fall at that time, but went home. Early the next morning, the claimant's ankle was extremely swollen. She called a supervisor in her department and told him that she had to go to the doctor for her swollen ankle. The evidence is conflicting as to whether she told the supervisor it was work related. The claimant went to the emergency room (ER) for treatment, but left after three hours without being seen. She returned to the ER on Sunday, September 18, 2000. The claimant asserts that she told the people at the ER her injury was work related and that she also injured her low back in the fall; however, the ER records contain no information about the injury occurring at work or the claimant reporting a low back problem. The claimant was given an off-work slip for five days which she took to the employer on Monday, September 19, 2000. At that time the claimant was informed she had been terminated for

missing work. The evidence was conflicting as to what date the employer and/or carrier knew the claimant was claiming a work-related injury.

The hearing officer evaluated the conflicting testimony and evidence. He reviewed the medical reports and determined that the claimant did not sustain a low back injury in the work-related accident of _____. We affirm that determination. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 16, 1994.

The hearing officer made Finding of Fact No. 7 which included the following:

> Claimant's treating doctor made a telephone call to the Carrier's adjuster between October 11 and October 24, 2000 and asked if there was a claim number for the Claimant. The doctor's staff member advised the adjuster that the ankle and low back were involved, but did not any provide [sic] information that would cause a reasonably prudent person to understand that the injury had supposedly occurred at work.

The hearing officer has failed to make a finding as to the date that the carrier was actually contacted by the claimant's physician. He has provided a range of dates which are

determinative to the issue of timely notice to the carrier. If the contact was made on or prior to October 14, 2000, the notice would be timely. If the notice was given on or after October 15, 2000, it would be untimely unless an exception applies. Additionally, the hearing officer determined that this contact would not cause a reasonably prudent person to understand that the injury had supposedly occurred at work; however, the substance of this contact caused the adjuster to commence an investigation with the employer. This indicates that the substance of the contact with the carrier did cause the adjuster to understand that a work-related injury was being alleged by the claimant. We reverse Finding of Fact No. 7 and Conclusions of Law Nos. 2, 3, and 5 and remand for such further consideration, findings, and conclusions as are appropriate and consistent with this decision.

As to the carrier's contentions, in view of the remand of this case, we will not make a decision at this time.

Accordingly, the hearing officer's decision and order are affirmed in part and reversed and remanded in part. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge